



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

JUL 24 2014

John B. King
556 Oak Terrace
Farmington, MO 63640

Dear Mr. King:

As we have discussed, the United States Environmental Protection Agency, Region 7 (EPA) has ongoing actions to remove lead contaminated residential yard soil in St. Francois County, Missouri. In response to your request to develop your property into an on-site soil repository, we have prepared the attached Environmental Covenant. In order to proceed with the development of the repository, you will be required to enter into this Environmental Covenant.

The Environmental Covenant is a legal document which places restrictions on the property subject to the Covenant. The purpose of this Covenant is to provide notice that contaminated soils remain on the property after completion of the work; and to restrict activities at the property that might result in exposure to lead contaminated soils.

EPA plans to transport lead contaminated soil to your property to use as cover for mine waste present on your property. EPA will consolidate the lead contaminated soils, grade the property and construct a cap for the area from clean soil and/or rock.

As the owner, you will be responsible for the maintenance of the cap. You will be required to annually inspect the cap and repair it if it becomes damaged. Your participation is necessary for the remedy to remain protective.

Please execute the enclosed environmental covenant and return it to the following address within 30 days of the date of this letter:

ATTN: SUPR/SPEB Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, KS. 66219-9868

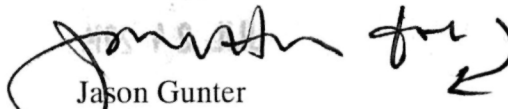
After you return the signed environmental covenant I will send it to the State for signature. Once it is fully executed I will return the original to you to record with St. Francois County, Missouri. Please call me if you have any questions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RECEIVED
Office of Environmental Response
Washington, D.C. 20460

Thank you again for your cooperation in this matter.

Sincerely,


Jason Gunter
EPA Remedial Project Manager

(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Document Date: 7/24/2014

Grantor: Dix Greenhouse, Inc.
c/o John B. King, Registered Agent
556 Oak Terrace
Farmington, Missouri 63640

Grantee: Dix Greenhouse, Inc.
c/o John B. King, Registered Agent
556 Oak Terrace
Farmington, Missouri 63640

Departments: Missouri Department of Natural Resources
P.O. Box 176, 1101 Riverside Drive, Jefferson City, Missouri 65102

United States Environmental Protection Agency – Region VII
11201 Renner Blvd.
Lenexa, Kansas 66219

Legal Description: See Attached Exhibit B, copy of the general warranty deed

ENVIRONMENTAL COVENANT

This Environmental Covenant ("Covenant") is entered into by and between the Grantor, Dix Greenhouse, Farmington, Missouri ("Owner"), the Grantee, Dix Greenhouse, Farmington, Missouri ("Holder"), the Missouri Department of Natural Resources ("MDNR"), and the United States Environmental Protection Agency ("EPA") (together, MDNR and EPA shall be referred to as the "Departments", or may be referred to generically as a "Department" when a provision could apply to either) pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo. Owner, Holder, and the Departments may collectively be referred to as the "Parties" herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property commonly known and numbered as Dix Greenhouse, 511 10th Street, (Parcel ID: 09200902001000300R), Park Hills, St. Francois County, Missouri, shown on the site map attached hereto as Exhibit A, and legally described as:

See attached Exhibit B, copy of the general warranty deed (the "Property").

WHEREAS, the Property is situated in the City of Park Hills, St. Francois County, Missouri;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS, the MDNR and EPA each enter into this Covenant as a "Department" pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039 RSMo, with all the attendant rights of a "Department" under such Act, which include, but are not limited to, having a right to enforce this Covenant;

WHEREAS, Holder enters into this Covenant as a "Holder" pursuant to the Missouri Environmental Covenants Act, with all the attendant rights of a "Holder" under such Act, which include, but are not limited to, acquiring an interest in the Property and a right to enforce this Covenant;

WHEREAS, EPA has performed an investigation on the Property. EPA requires the Owner to file an Environmental Covenant for the Property with the appropriate recorder of deeds because contaminants of concern remain at the Property above levels that allow for unrestricted land use.

WHEREAS, the investigation conducted at the Property included the following activities:

-surface soil investigation (see sampling map in Exhibit C)

The Property is located within the Big River Mine Tailings Superfund Site, St. Francois County, Missouri. The Property is a former greenhouse facility owned by "Dix Greenhouse" in the City of Park Hills, Missouri and is zoned for industrial use by the City of Park Hills. All or a portion of the Property was the location of the former Columbia Lead Company, which mined and processed lead ore on and near the Property.

The Property was sampled to determine the areas on the Property that were contaminated with lead, a hazardous substance listed under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). EPA divided the property into 45 one-acre sampling units. 43 of the 45 sampling units contained lead greater than 800 parts per million (ppm), the EPA screening level of lead for industrial use. EPA and the owner have determined that this area would be acceptable to use as an on-site soil repository for lead-contaminated soil from residential properties in St. Francois County. This repository would be used for Removal and Remedial properties. This would consist of transporting up to 150,000 cubic yards of lead-contaminated soil to the site, grading, and covering with a minimum of 12 inches of clean soil and/or rock. The capped area will be graded to promote proper drainage and areas with soil will be revegetated. The property is zoned industrial by the City of Park Hills, is fenced to prevent access, and is centrally located within the Big River Mine Tailings Site.

WHEREAS, upon completion of the environmental response project described above, contaminants of concern, which include, but may not be limited to lead, cadmium and zinc, will remain on the Property above levels that allow for the unrestricted use of the Property; and

WHEREAS, the environmental response project described above is deemed protective if, and only if, the activity and use limitations described in this Covenant remain in place for as long as the contaminants of concern remain at the Property above levels that allow for the unrestricted use of the Property.

WHEREAS, for purposes of the environmental response project described above, and for purposes of responding to any requests or acting on any submittals made under this Covenant, EPA shall be the "Lead Agency" and MDNR shall be the "Support Agency" as specified below. The Departments intend that the Lead Agency will provide reasonable opportunities for consultation with the Support Agency as described below, and that the Support Agency will provide input, if any, to the Lead Agency within reasonable timeframes and as appropriate under the circumstances. If MDNR and EPA subsequently agree to change such roles, then the Lead Agency shall so notify the current Owner/Transferee and the Holder, with a copy to the Support Agency.

NOW THEREFORE, Owner, Holder, and the Departments agree to the following:

1. Parties.

The Owner, Holder, and the Departments are parties to this Covenant, and may enforce it as provided in Section 260.1030, RSMo.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations: **LAND USE RESTRICTIONS:**

No Residential Land Use:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, the Property currently does not meet the Departments' standards for residential or non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property shall **not** be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child-care facilities, or any land use where persons can be expected to reside.

SOIL RESTRICTIONS:

No Disturbance of Soil:

Based on reports on file at the EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, contaminants of concern remaining at the Property exceed the Departments' standards for non-residential use, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the property so long as the soil is not disturbed such that exposure may result.

Therefore, soil on the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of the Lead Agency. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall request permission to do so from the Departments at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur. However, prior written approval of the Lead Agency is not required for the following activities:

- Minor excavations necessary to install, maintain or repair utility and light poles
- Minor excavation/disturbance necessary to install fence posts
- Minor excavation/disturbance necessary to install sidewalks, paving, and other comparable activities
- Minor excavations necessary to maintain or repair existing underground utilities
- Minor excavation/disturbance in connection with landscaping activities or tree removal.

Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Departments and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such emergency and any response actions.

Construction Worker Notice:

In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property, Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant and the Post-Removal Site Control Plan to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years, and shall provide copies of such records to the Departments and/or Holder upon request.

Engineered Controls for Soil:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, contaminants of concern remaining in the soil at the Property do not pose a significant current or future risk to human health or the environment so long as the engineered control(s) described below is/are maintained so as to prevent exposure, release, or migration of contaminants from the soil.

Therefore, the following engineered controls must remain in place and remain effective in accordance with the Post-Removal Site Control Plan (PRSCP). The PRSCP will be implemented upon completion of the soil/gravel cover. The PRSCP will be drafted by EPA and will be approved by the Owner and Departments, unless and until the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) provides written approval for any modifications:

- The Property shall not be used, developed or operated in any manner that will impair, degrade or compromise the environmental response project performed to stabilize and secure mine wastes and other contaminated materials.
- All areas encapsulated with clean soil or rock shall be inspected annually to determine if any mine waste has migrated to the surface. This will be determined by visual inspection and sampling if necessary. The Owner/Transferee shall give the Departments 30 days notice prior to the annual inspection. If the soil/rock cover is damaged then the Owner/Transferee shall

cover the areas in question back to the original grade with clean soil or type 5 aggregate.

- All areas encapsulated with soil shall be inspected annually by the Owner/Transferee to determine if the vegetation is adequate to protect the engineered soil cover. If revegetated soil is part of the cover, a site-specific revegetation plan shall be included in the Post-Removal Site Control Plan. If the Departments determine that vegetation is inadequate, the Owner/Transferee shall revegetate accordingly.
- All areas encapsulated with soil or rock shall be inspected annually by the Owner/Transferee to determine if there are any rutted or damaged areas on the engineered soil cover. The Owner/Transferee shall repair all such damaged areas per the Post-Removal Site Control Plan.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's successors, assigns, and other transferees in interest (collectively referred to as "Transferees") during their period of ownership (except that the obligation described below in Paragraph 16 to re-direct any mis-directed communication shall continue beyond an Owner/Transferee's period of ownership) and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

Records of this environmental response project for the Property are currently located in EPA's offices in Lenexa, Kansas, and in MDNR's offices in Jefferson City, Missouri. Information regarding the environmental response project may be obtained from the Departments by making a request to EPA pursuant to the United States Freedom of Information Act, 5 U.S.C. § 552, and/or to MDNR pursuant to the Missouri "Sunshine Law", Chapter 610, RSMo, by referencing the site identification name of Big River Mine Tailings 001 Residential Actions/Source Control, CERCLIS# MOD981126899.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030, RSMo. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority or rights under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, a Department may require

Owner/Transferee to submit a plan to correct any alleged violation of this Covenant, in which case such Department shall provide written notification to the other Department and the Holder. If such Owner/Transferee fails to act within the required timeframe or if a Department finds a proposed remedy unacceptable, that Department may pursue any remedy authorized by law. In such event, such Department shall provide written notification to the other Department and the Holder, prior to or contemporaneously with any legal action taken to enforce this Covenant.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder and the Departments and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede a Department's rights of access and entry under federal or state law or other agreement.

7. Compliance Reporting.

Owner/Transferee shall submit to Holder and the Departments, by no later than January 31st of each year, documentation verifying that the activity and use limitations imposed hereby were in place and complied with during the preceding calendar year. The Compliance Report shall include the following statement, signed by Owner/Transferee:

I certify that to the best of my knowledge, after thorough evaluation of appropriate facts and information, the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Covenant in writing as soon as possible, but no later than ten (10) business days thereafter.

8. Additional Rights.

None specified.

9. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF _____ COUNTY, _____, ON _____, 20____, AS DOCUMENT _____, BOOK _____, PAGE _____.

Owner/Transferee shall notify Holder and the Departments within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties.

Owner hereby represents and warrants to Holder and the Departments that:

- a) Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;
- b) this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and
- c) Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered.

11. Amendments, Termination, and Temporary Deviations.

This Covenant may be amended or terminated by approval of the Departments, Holder, and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to section 260.1027 RSMo. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Lead Agency in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to the Departments to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which shall not exceed ninety (90) days. Any such request shall be transmitted to the Holder and the Departments as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. After a reasonable opportunity for consultation with the Support Agency, the Lead Agency will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

14. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

15. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of each county in which the Property is situated.

16. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property, including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated herein.

17. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner/Transferee:

Dix Greenhouse, Inc.
c/o John B. King, Registered Agent
556 Oak Terrace
Farmington, Missouri 63640

If to Holder:

Dix Greenhouse, Inc.
c/o John B. King, Registered Agent

556 Oak Terrace
Farmington, Missouri 63640

If to MDNR:

Brandon Wiles
Project Manager – Big River Mine Tailings Superfund Site
Hazardous Waste Program, Superfund Section
P.O. Box 176
Jefferson City, MO 65102-0176
Phone: 573-526-4208
Email: Brandon.wiles@dnr.mo.gov

If to EPA:

Jason Gunter
Project Manager – Big River Mine Tailings Superfund Site
U.S. Environmental Protection Agency – Region VII
11201 Renner Blvd.
Lenexa, KS 66219
Phone: 913-551-7358
Email: gunter.jason@epa.gov

Owner/Transferee, Holder, or the Departments may change their designated recipient of such notices by providing written notice of the same to each other. If any notice or other submittal under this Covenant is received by a former Owner/Transferee who no longer has an interest in the Property, then such former Owner/Transferee shall notify the Departments, the Holder, and the current Owner/Transferee of the Property regarding the mis-directed communication.

18. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant during their period of ownership, or the obligation to comply with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, State, or local laws or regulations, and the Departments do not warrant or aver in any manner that an Owner/Transferee's compliance with this Covenant will constitute compliance with any such requirements. The Departments reserve all legal and equitable remedies available to enforce this Covenant or any other legal requirement, and/or to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Property. Nothing herein shall be construed so as to prevent a Department or Holder from taking any independent actions as allowed by law.

The undersigned represent and certify that they are authorized to sign this Covenant on behalf of their respective Parties.

IT IS SO AGREED:

FOR OWNER:

By: _____
Name (print): _____
Title: _____
Address: _____

Date: _____

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 20__, before me a Notary Public in and for said state, personally appeared _____ (Name), _____ (Title) of _____ (Corporate Name), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

FOR HOLDER:

By: _____

Date: _____

Name (print): _____

Title: _____

Address: _____

STATE OF _____)

_____)

COUNTY OF _____)

On this ____ day of _____, 20__, before me a Notary Public in and for said state, personally appeared _____ (Name), _____ (Title) of _____ (Corporate Name), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

Date: _____

Notary Public

FOR EPA

By: _____

Date: _____

Cecilia Tapia
Director
Superfund Division
US EPA, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF _____)

COUNTY OF _____)

On this ____ day of _____, 20__, before me a Notary Public in and for said state, personally appeared _____ [name], _____ [title] of the U.S. Environmental Protection Agency - Region VII, a federal agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Administrator and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public